

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANA DOZIER-QUINE,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration,

Defendant.

NO: 1:14-CV-3176-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment, ECF Nos. 17, 20. Plaintiff is represented by D. James Tree. Defendant is represented by Special Assistant United States Attorney Leisa A. Wolf. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed.

Ana Dozier-Quine seeks judicial review of the Commissioner's final decision denying her Child Disability Benefits under Title II and Supplemental Security Income under Title XVI.

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”

2 *Id.* An error is harmless “where it is inconsequential to the [ALJ’s] ultimate
3 nondisability determination.” *Id.* at 1115 (quotation and citation omitted). The
4 party appealing the ALJ’s decision generally bears the burden of establishing that
5 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s
13 impairment must be “of such severity that he [or she] is not only unable to do his
14 [or her] previous work[,] but cannot, considering his [her] age, education, and
15 work experience, engage in any other kind of substantial gainful work which exists
16 in the national economy.” 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

17 To be entitled to child’s insurance benefits under Title II of the Social
18 Security Act, a claimant over the age of 18 must establish, inter alia, a disability
19 that began prior to the age of 22. *See* 20 C.F.R. § 404.350(a)(5). Thus, claimant
20 must prove her disability began on or before her 22nd birthday.

1 The Commissioner has established a five-step sequential analysis to
2 determine whether a claimant satisfies the above criteria. *See Molina v. Astrue*,
3 674 F.3d at 1110; 20 C.F.R. §§ 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step
4 one, the Commissioner considers the claimant's work activity. 20 C.F.R. §§
5 404.1520(a)(4)(i); 416.920(a)(4)(i). If the claimant is engaged in "substantial
6 gainful activity," the Commissioner must find that the claimant is not disabled. 20
7 C.F.R. §§ 404.1520(b); 416.920(b).

8 If the claimant is not engaged in substantial gainful activities, the analysis
9 proceeds to step two. At this step, the Commissioner considers the severity of the
10 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
11 claimant suffers from "any impairment or combination of impairments which
12 significantly limits [his or her] physical or mental ability to do basic work
13 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
14 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
15 however, the Commissioner must find that the claimant is not disabled. *Id.*

16 At step three, the Commissioner compares the claimant's impairment to
17 several impairments recognized by the Commissioner to be so severe as to
18 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
19 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe, or more
20

1 severe than one of the enumerated impairments, the Commissioner must find the
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

3 If the severity of the claimant's impairment does meet or exceed the severity
4 of the enumerated impairments, the Commissioner must pause to assess the
5 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
6 defined generally as the most that the claimant can do in a work setting on a
7 sustained basis despite his or her limitations (20 C.F.R. §§ 404.1545(a)(1);
8 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

9 At step four, the Commissioner considers whether, in view of the claimant's
10 RFC, the claimant is capable of performing work that he or she has performed in
11 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);
12 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
13 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
14 404.1520(f); 416.920(f). If the claimant is incapable of performing such work, the
15 analysis proceeds to step five.

16 At step five, the Commissioner considers whether, in view of the claimant's
17 RFC, the claimant is capable of performing other work in the national economy.
18 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
19 the Commissioner must also consider vocational factors such as the claimant's age,
20 education and work experience. *Id.* If the claimant is capable of adjusting to other

1 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
3 work, the analysis concludes with a finding that the claimant is disabled and is
4 therefore entitled to benefits. *Id.*

5 The burden of proof is on claimant at steps one through four above. *Bray v.*
6 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). If the analysis
7 proceeds to step five, the burden shifts to the Commissioner to establish that (1) the
8 claimant is capable of performing other work; and (2) such work “exists in
9 significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c);
10 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

11 ALJ’S FINDINGS

12 On May 12, 2009, Plaintiff filed concurrent applications for child disability
13 insurance benefits and Supplemental Security Income under Titles II and XVI of
14 the Social Security Act. Tr. 204-205, 206-209. Her claims were denied initially
15 and upon reconsideration. Tr. 118-133; 137-150. She filed a request for a hearing,
16 Tr. 151-53, and a hearing was held February 25, 2013, Tr. 33-75. At the hearing,
17 Plaintiff amended her alleged onset date to March 1, 2009. Tr. 36.

18 The ALJ issued a written decision on March 19, 2013, concluding that
19 Plaintiff was not disabled under the Social Security Act. Tr. 18-28. The ALJ
20 found Plaintiff had not attained the age of 22 as of March 1, 2009, the alleged

1 onset date. Tr. 20. At step one, the ALJ found Plaintiff had engaged in substantial
2 gainful activity in 2012, but determined her work activity from 2009 through 2011
3 did not rise to the level of substantial gainful activity. Tr. 20-21. At step two, the
4 ALJ determined Plaintiff has the following severe physical impairments: chronic
5 pain in subtalar joints due to capsulitis and multiple surgeries (i.e., bunionectomy,
6 left hallux abductovalgus with recurrent bunion, and deformity with hardware
7 removal); obesity; and no vision left eye (with normal right eye [vision]). Tr. 21.
8 Plaintiff's hypothyroidism, depression, anxiety, and pain disorder, were
9 determined to be "non-severe" impairments. Tr. 21-23. At step three, the ALJ
10 found that Plaintiff does not have an impairment or combination of impairments
11 that meets or medically equals a listed impairment. Tr. 23. The ALJ found that
12 Plaintiff had the residual functional capacity to:

13 perform a reduced range of light work as defined in 20 CFR
14 404.1567(b) and 416.967(b). She can lift and carry 20 pounds
15 occasionally and 10 pounds frequently. She can sit for about six
16 hours and stand and/or walk for about two hours in an eight-hour day
17 with regular breaks. She can stand and/or walk in increments of up to
18 15 minutes at a time. She has an unlimited ability to push/pull within
19 these exertional limitations. She can never climb ladders, ropes, or
20 scaffolds, but she can occasionally climb ramps and stairs. She can
frequently balance, kneel, crouch, and crawl. She has an unlimited
ability to stoop. She has no vision in her left eye but has normal
vision in her right eye (i.e., her vision is adequate for her to do such
activities as using a computer, reading, and driving). She should
avoid concentrated exposure to extreme cold, vibration, and hazards.

1 Tr. 23-24. At step four, the ALJ determined Plaintiff could not perform her past
2 relevant work as a newspaper carrier and cashier, which involved standing and/or
3 walking for longer than 15 minutes at a time. Tr. 26. At step five, the ALJ
4 considered Plaintiff's age, education, work experience, and residual functional
5 capacity, and determined based upon the Medical Vocational Guidelines and
6 testimony of a vocational expert, that "there are jobs that exist in significant
7 numbers in the national economy that the [Plaintiff] can perform." Tr. 26. These
8 representative occupations include: order clerk (DOT code 209.567-
9 014/sedentary/SVP 2); stuffer (DOT code 731.685-014/sedentary/SVP 2), and
10 fishing reel assembler (DOT code 732.684-062/sedentary/SVP 2). Tr. 27. On that
11 basis, the ALJ found Plaintiff was not disabled. Tr. 27-28.

12 On September 23, 2014, the Appeals Council denied Plaintiff's request for
13 review, Tr. 1-3, making the ALJ's decision the Commissioner's final decision for
14 purposes of judicial review. See 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481,
15 422.210.

16 ISSUES

17 Plaintiff raises the following three issues:

- 18 1. Did the ALJ err in failing to properly account for Ms. Dozier-Quine's
19 depression, anxiety, and pain syndrome?

1 2. Did the ALJ err in finding Ms. Dozier-Quine's symptom testimony,
2 including the frequency with which she has to elevate her feet, not fully
3 credible?

4 3. Did the ALJ err by rejecting Dr. Cardon's opinion that Ms. Dozier-Quine
5 needs to lie down 30 minutes twice a day?

6 DISCUSSION

7 A. Step Two, Non-Severe Mental Impairments

8 Plaintiff argues the ALJ erroneously concluded that her depression, anxiety,
9 and pain disorder were not severe impairments. ECF No. 17 at 18. Plaintiff
10 contends this error prejudiced the ALJ's RFC determination and her credibility
11 determination. *Id.* at 20. Plaintiff asserts that her mental impairments as assessed
12 by Dr. Schneider in 2010 (Tr. 449-455) and Dr. Harrison (Tr. 458-462), and as she
13 described at the hearing, severely limit her ability to function. ECF No. 21 at 8-9.

14 The step two inquiry is merely a *de minimis* screening device intended to
15 dispose of groundless claims. *Edlund v. Massanari*, 253 F.3d 1152, 1158 (9th Cir.
16 2001). It does not result in a finding of disability if a particular impairment is
17 found to be "severe" within the meaning of the Commissioner's regulations. *See*
18 *Hoopai v. Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007).

19 An impairment, to be considered severe, must significantly limit an
20 individual's ability to perform basic work activities. 20 C.F.R. § 416.920(c); SSR

1 96-3P, 1996 WL 374181; *see Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.
2 1996). Basic work activities include “abilities and aptitudes necessary to do most
3 jobs, including, for example, walking, standing, sitting, lifting, pushing, pulling,
4 reaching, carrying or handling.” 20 C.F.R. § 416.921(b). An impairment must be
5 established by medical evidence consisting of signs, symptoms, and laboratory
6 findings, and “under no circumstances may the existence of an impairment be
7 established on the basis of symptoms alone.” *Ukolov v. Barnhart*, 420 F.3d 1002,
8 1005 (9th Cir. 2005) (citing SSR 96-4p, 1996 WL 374187 (July 2, 1996)) (defining
9 “symptoms” as an “individual’s own perception or description of the impact of”
10 the impairment). Plaintiff bears the burden of proving that his medically
11 determinable impairment or its symptoms affect his ability to perform basic work
12 activities. *Edlund*, 253 F.3d at 1159-60.

13 In determining, at step two, the severity of mental functional limitations, an
14 ALJ must consider the claimants: (1) daily activities; (2) social functioning; (3)
15 concentration, persistence, or pace; and (4) episodes of decompensation. 20 C.F.R.
16 § 404, subpt. P, app. 1, 12.00(C); SSR 96-8p, 1996 WL 374184 (July 2, 1996)
17 (“[P]aragraph B and paragraph C” limitations “are used to rate the severity of
18 mental impairment(s) at steps 2 and 3 of the sequential evaluation process.”). If
19 the ALJ concludes that the limitation is “mild” or “none” in the first three
20 functional areas and “none” in the fourth area, a finding that the impairment is not

1 sever is appropriate, “unless the evidence otherwise indicates that there is more
2 than a minimal limitation in [the claimant’s] ability to do basic work activities.”
3 20 C.F.R. §§ 404.1520a(d)(1), 416.920a(d)(1); see also *Fisher v. Astrue*, 788
4 F.Supp.2d 1219, 1229-30 (E.D. Wash. 2011).

5 Here, the ALJ concluded that Plaintiff had (1) no limitation in activities of
6 daily living, (2) no limitation in social functioning, (3) mild limitation in
7 concentration, persistence and pace, and (4) no episodes of decompensation. Tr.
8 22-23. Plaintiff disputes the ALJ’s second and third findings. She contends her
9 mental impairments have more than minimal impact on her social functioning
10 because she had only two friends, had problems socializing with others and found
11 it difficult to talk to her supervisor. ECF No. 17 at 18-19. Plaintiff claims Dr.
12 Schneider, an examining psychologist, “found that her affect was constricted.” *Id.*
13 at 19. That is not the whole truth. Dr. Schneider described Plaintiff’s behavior
14 during the examination as follows: “Affect was basically normal other than that
15 first constriction during her shy period.” Tr. 453. Plaintiff also observes that the
16 psychologist found her to be “quite depressed, socially withdrawn young woman.”
17 ECF No. 17 at 19; Tr. 454. However, the ALJ found that Plaintiff has friends, goes
18 outside alone, drives, shops, goes to school, goes to the movies, has performed
19 music in public, and works 22 to 24 hours a week as a cashier. Tr. 22. The record
20 also reflected pleasant and appropriate interactions with providers and others. *Id.*

1 Substantial evidence in the record supports the ALJ's finding of no limitation in
2 social functioning.

3 With regards to the ALJ's finding of mild limitation in concentration,
4 persistence or pace, the ALJ observed that the Plaintiff had received very little
5 mental health treatment. *Id.* Plaintiff contends that Dr. Schneider indicated that
6 she had likely been depressed for a long time and learned to see her condition as
7 normal over the years. ECF No. 17 at 19. She claims to have problems with
8 concentration, organization, and motivation, consistent with a diagnosis of
9 depression and caused by her largely-unaddressed mental health issues. *Id.* at 20.

10 The ALJ accepted Dr. Harrison's second 2012 mental status examination
11 (treatment examination) showing she was "fully oriented with normal memory
12 with normal motor behavior, linear and goal directed thought process, logical
13 thought content, and good impulse control." Tr. 22; 458-59. The ALJ also found
14 that Plaintiff's ability to use the computer, read without difficulty, shop and handle
15 her own money, and work two jobs while going to school "suggests that she has no
16 significant limitation in cognitive functioning." Tr. 22.

17 Plaintiff contends that in making these findings the ALJ disregarded the
18 uncontroverted fact she "suffers from depression and social anxiety." ECF No. 21
19 at 8. However, a medical diagnosis alone is insufficient to establish a severe
20 impairment under the regulations. The ALJ found that "[a]lthough the claimant's

1 mental health impairments are medically determinable, I have determined that they
2 are non-severe based on her lack of significant mental health treatment, her
3 relatively mild symptoms, her performance on mental status examinations, and her
4 daily activities including working and going to school as set forth above.”). Tr. 25.
5 Substantial evidence supports the ALJ’s conclusion that Plaintiff’s mental
6 impairments are non-severe.

7 **B. Plaintiff’s Symptom Testimony**

8 Plaintiff argues the ALJ erred in finding her symptom testimony, including
9 the frequency with which she has to elevate her feet, was not fully credible. ECF
10 No. 17 at 11-16.

11 To evaluate the credibility of a claimant's testimony regarding subjective
12 complaints of pain and other symptoms, an ALJ must engage in a two-step
13 analysis. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). “First, the ALJ
14 must determine whether the claimant has presented objective medical evidence of
15 an underlying impairment which could reasonably be expected to produce the pain
16 or other symptoms alleged.” *Id.* (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028,
17 1035-36 (9th Cir. 2007) (internal quotations omitted). “In this analysis, the
18 claimant is not required to show ‘that her impairment could reasonably be expected
19 to cause the severity of the symptom she has alleged; she need only show that it
20 could reasonably have caused some degree of the symptom.’” *Id.* (quoting *Smolen*,

1 80 F.3d at 1282). “Nor must a claimant produce ‘objective medical evidence of the
2 pain or fatigue itself, or the severity thereof.’” *Id.* (quoting *Smolen*, 80 F.3d at
3 1281). “If the claimant satisfies the first step of this analysis, and there is no
4 evidence of malingering, ‘the ALJ can reject the claimant's testimony about the
5 severity of her symptoms only by offering specific, clear and convincing reasons
6 for doing so.’” *Id.* at 1014-15 (quoting *Smolen*, 80 F.3d at 1281). “This is not an
7 easy requirement to meet: ‘The clear and convincing standard is the most
8 demanding required in Social Security cases.’” *Id.* at 1015 (quoting *Moore v.*
9 *Comm'r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

10 Factors that an ALJ may consider in weighing a claimant's credibility
11 include: (1) the claimant's reputation for truthfulness; (2) inconsistencies in the
12 claimant's testimony or between his testimony and his conduct; (3) the claimant's
13 daily living activities; (4) the claimant's work record; and (5) testimony from
14 physicians or third parties concerning the nature, severity, and effect of the
15 claimant's condition. *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). The
16 ALJ “must specifically identify the testimony she or he finds not to be credible and
17 must explain what evidence undermines the testimony.” *Holohan v. Massanari*,
18 246 F.3d 1195, 1208 (9th Cir. 2001). The “clear and convincing reasons” for an
19 adverse credibility finding must be supported by substantial evidence. *Carmickle v.*
20 *Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (stating the next

1 task for a court is “to determine whether the ALJ's adverse credibility finding of
2 [the claimant's] testimony is supported by substantial evidence under the clear-and-
3 convincing standard”).¹ If, “ALJ's credibility finding is supported by substantial
4 evidence in the record, [this Court] may not engage in second-guessing.” *Thomas*
5 *v. Barnhart*, 278 F.3d at 959 (citation omitted).

6 Plaintiff testified that she can only stand for a half hour before her feet “start
7 killing” her. Tr. 51. Plaintiff explained long shifts or work two days in a row were
8 “very painful.” Tr. 45. She would elevate her feet on breaks and by the end of her
9 shift would hurt so much that her pain was at a level eight out of ten. Tr. 51. She
10 also testified that sitting also caused her foot pain. Tr. 67. When questioned by the
11 ALJ if she would need to elevate her feet for one hour after sitting for two or three
12 hours she responded “yeah, yeah, yeah, that’s what – yeah, that would be about
13 right, I suppose.” Tr. 66. When asked how high, Plaintiff suggested elevating them
14 above her heart. Tr. 52. When asked whether she could perform a sedentary job
15 with regular breaks allowing her to elevate her feet, Plaintiff responded “I could do
16
17

18 ¹ The Commissioner disputes this standard of review. The Ninth Circuit rejected
19 the Commissioner’s similar argument in *Burrell v. Colvin*, 775 F.3d 1133, 1136–37
20 (9th Cir. 2014), and that holding is binding on this Court.

1 it and I don't know how long I could do that for. I don't know if I could do that for
2 a day, a month, a year." Tr. 67.

3 The ALJ found that Plaintiff's testimony regarding the intensity, persistence,
4 and limiting effects of her symptoms including pain was not fully credible for three
5 reasons: (1) her daily activities and ability to perform part-time work and go to
6 school; (2) because the medical evidence did not support the severity of the
7 allegations; (3) and because of evidence that Plaintiff's "mother is a motivating
8 factor" behind Plaintiff's disability claim. Tr. 24-25. The Plaintiff disputes that
9 these reasons were specific, clear, and convincing.

10 The ALJ first found that Plaintiff's independent activities of daily living are
11 inconsistent with her allegations of disabling functional limitations. Tr. 24. The
12 ALJ extensively discussed the evidence that she could drive, work as a newspaper
13 carrier, perform music on stage, attend judo class a couple times a week, take care
14 of personal needs, play on the computer, attend college, and work part-time as a
15 cashier at Shopko, among other activities. Tr. 22. Plaintiff disputes the ALJ's
16 statement that Plaintiff's "ability to work as a [cashier] for 22 to 24 hours per week
17 suggests that she would be able to perform work with less standing and walking on
18 a sustained basis." ECF No. 17 at 12-13 (citing Tr. 24). Plaintiff points out she
19 was unable to successfully hold down two jobs and maintain her academics. *Id.*
20 However, Plaintiff testified she quit her job as a newspaper carrier not because of

1 her impairments but because she “was tired of getting up at 3:00 o’clock in the
2 morning...” Tr. 48. The Plaintiff’s level of activity and her ability to withstand her
3 pain while performing part-time work does not lend support to allegations of
4 disabling pain and are factors the ALJ may consider in assessing credibility. *See,*
5 *e.g., Magallanes v. Bowen*, 881 F.2d 747, 756 (9th Cir. 1989) (“Our cases no not
6 prevent the ALJ from taking into account a claimant’s level of activity. . .”); *Bray*
7 *v. Comm’r*, 554 F.3d at 1227 (claimant was not credible because she “recently
8 worked as a personal caregiver for two years, and has sought out other
9 employment since then”). This was a specific, clear and convincing reason for the
10 ALJ to discount Plaintiff’s credibility.

11 The ALJ’s second reason for finding Plaintiff less than credible were
12 inconsistencies with the medical evidence. Tr. 25. The ALJ observed her foot
13 pain was surgically treated and post-operatively deemed “stable”; she was not
14 taking any medications; and two providers, including her podiatrist, Stuart Cardon,
15 opined she could likely perform a job that did not involve a lot of standing or
16 walking. *Id.* To accommodate for this, the ALJ’s RFC finding included a reduced
17 range of light work involving a greater limitation on standing and walking. Tr. 23
18 (“She can sit for about six hours and stand and/or walk for about two hours in an
19 eight-hour day with regular breaks. She can stand and/or walk in increments of up
20 to 15 minutes at a time.”). Plaintiff claims the ALJ’s analysis minimizes the fact

1 she suffers from chronic pain and as was advised by Dr. Daniel Kwon at Water's
2 Edge to avoid narcotic therapy for long-term treatment of a chronic nature (Tr.
3 400). ECF No. 17 at 13-14. The inconsistencies noted by the ALJ are specific,
4 clear and convincing reasons to partially reject Plaintiff's alleged limitations. *See*
5 *Meanel v. Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999) (plaintiff's claim of extreme
6 pain inconsistent with "minimal, conservative treatment" received); *Johnson v.*
7 *Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (ALJ correctly considered
8 conservative nature of treatment in determining credibility).

9 Third, the ALJ noted the possibility Plaintiff's application was motivated by
10 secondary gain suggesting that "the claimant's mother is a motivating factor
11 behind the claimant's disability claim." Tr. 25. The ALJ based this finding on two
12 different treatment providers' notes. A clinic note from Plaintiff's podiatrist noted
13 that Plaintiff's reported pain seemed less severe outside her mother's presence. Tr.
14 340 (relating to treatment for a fractured big toe). Another provider remarked her
15 mother was "somewhat pushy about the claimant's disability." Tr. 392 (her
16 mother says she should be on disability, but Plaintiff seems rather excited about
17 having a job). The Commissioner has not defended the ALJ's reasoning.

18 The elimination of any one reason does not necessarily mean the ALJ's
19 entire credibility assessment is improper. *Bray v. Comm'r*, 554 F.3d at 1227
20

1 (finding error, if any, was harmless). The ALJ's other reasons for finding Plaintiff
2 less than fully credible are valid, convincing grounds.

3 **C. Opinion of Stuart Cardon, DPM**

4 Plaintiff contends that the ALJ improperly rejected the Dr. Cardon's opinion
5 that Plaintiff needs to lie down for 30 minutes, twice a day. ECF No. 17 at 16-18.
6 The ALJ gave limited weight to Dr. Cardon's assessment, explaining that "Dr.
7 Cardon provided no reason in support of his opinion, which is inconsistent with the
8 claimant's treatment records and daily activities." Tr. 25.

9 There are three types of physicians: "(1) those who treat the claimant
10 (treating physicians); (2) those who examine but do not treat the claimant
11 (examining physicians); and (3) those who neither examine nor treat the claimant
12 but who review the claimant's file (nonexamining or reviewing physicians)."
13 *Holohan v. Massanari*, 246 F.3d at 1201-02 (brackets omitted). "Generally, a
14 treating physician's opinion carries more weight than an examining physician's,
15 and an examining physician's opinion carries more weight than a reviewing
16 physician's." *Id.* "In addition, the regulations give more weight to opinions that are
17 explained than to those that are not, and to the opinions of specialists concerning
18 matters relating to their specialty over that of nonspecialists." *Id.* (citations
19 omitted).

1 If a treating or examining physician's opinion is uncontradicted, an ALJ may
2 reject it only by offering "clear and convincing reasons that are supported by
3 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
4 "However, the ALJ need not accept the opinion of any physician, including a
5 treating physician, if that opinion is brief, conclusory and inadequately supported
6 by clinical findings." *Bray v. Comm'r*, 554 F.3d at 1228 (internal quotation marks
7 and brackets omitted). "If a treating or examining doctor's opinion is contradicted
8 by another doctor's opinion, an ALJ may only reject it by providing specific and
9 legitimate reasons that are supported by substantial evidence." *Bayliss*, 427 F.3d at
10 1216 (citing *Lester*, 81 F.3d at 830-31).

11 On a form entitled "Medical Report", Dr. Cardon answered questions on
12 Plaintiff's behalf. Tr. 456-457. To the question: "Does your patient have to lie
13 down during the day?" He checked the line for "yes" but wrote "sit in recliner"
14 next to the response. To the question: "If yes, for how long and what reason:", he
15 simply wrote "30 min 2 x's day" without any elaboration for the reason. *Id.* He
16 further opined on the same form that work in a "sit down job" would not likely
17 cause Plaintiff's condition to deteriorate and she would have no expected
18 absenteeism because she "just tolerates the pain." *Id.*

19 The ALJ correctly noted that Dr. Cardon "provided no reason" because
20 neither the form itself nor any of Dr. Cardon's clinical notes mention or advise of

any need to “lie down” as Plaintiff describes it, or to “sit in recliner” as Dr. Cardon describes it. At most, his comment on the form about the need to “sit in recliner” comports with a single clinical note discussing the possible benefit of being “off the foot.” Tr. 429. But, as noted by the ALJ, Dr. Cardon expressed his belief both on the form and in his clinical notes that she could perform a job that did not involve a lot of standing or walking. Tr. 25. The Court concludes the ALJ gave specific and legitimate reasons, supported by substantial evidence, for according less weight to this unexplained limitation about the need for a recliner.

CONCLUSION

Having reviewed the record and the ALJ’s findings, the Court finds the ALJ’s decision is supported by substantial evidence and free of legal error.

Accordingly, **IT IS ORDERED:**

1. Plaintiff’s Motion for Summary Judgment, ECF No. 17, is **DENIED**.
2. Defendant’s Motion for Summary Judgment, ECF No. 20, is **GRANTED**.

The District Court Executive is directed to file this Order, enter Judgment accordingly, provide copies to counsel, and **CLOSE** the file.

DATED March 25, 2016.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge